



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,073	08/22/2003	David R. Shafer	KLAC0076	8450
20438 7590 09/23/2008 SMYRSKI LAW GROUP, A PROFESSIONAL CORPORATION 3310 AIRPORT AVENUE, SW SANTA MONICA, CA 90405				
EXAMINER PRITCHETT, JOSHUA L				
ART UNIT 2872		PAPER NUMBER		
MAIL DATE 09/23/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: DAVID R. SHAFER, YUNG-HO CHUANG,
and JOSEPH J. ARMSTRONG

Application No. 10/646,073
Technology Center 2800

Mailed: September 23, 2008

Before KRISTA ZELE *Deputy Chief Appeals Administrator*
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on July 7, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference Deutsch WO 01/57563 in rejecting the claims. A *full certified English translation* of the above noted foreign reference is not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) to obtain *full certified English language translation* of the above noted foreign reference;
- 2) to complete the IFW by having the translation(s) obtained scanned into the IFW file;
- 3) to provide copies of the translations obtained to Appellants; and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/eld

SMYRSKI LAW GROUP, A PROFESSIONAL CORPORATION
3310 AIRPORT AVENUE, SW
SANTA MONICA CA 90405